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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/709,828

06/01/2004

Thomas V. Taylor

TAY-16

3827

23508 7590 06/26/2009  
LUNDEEN & LUNDEEN, PLLC  
PO BOX 131144  
HOUSTON, TX 77219-1144

EXAMINER

ANDERSON, GREGORY A

ART UNIT

PAPER NUMBER

3773

NOTIFICATION DATE

DELIVERY MODE

06/26/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ekonokat@aol.com  
marcee@lpats.com  
dan@lpats.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/709,828	<b>Applicant(s)</b> TAYLOR ET AL.	
	<b>Examiner</b> GREGORY ANDERSON	<b>Art Unit</b> 3773	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 10 April 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-7,9,10 and 13-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10 and 13-23 is/are allowed.
- 6) ☐ Claim(s) 1-3 and 5-7 is/are rejected.
- 7) ☐ Claim(s) 4 and 9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>04102009</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3 and 5-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Taylor 20010020189.

Taylor discloses a device comprising: inner 87 and outer 83 elements defining an ingestion chamber with a proximal entry opening and a distal exit opening to limit a rate of efflux (Fig. 5); a plurality of openings in the outer element for protrusion of stomach lining to the inner element (Fig. 5); wherein the inner element includes a plurality of retention members 27 to hold the protruding stomach lining, whereby the device is secured to the stomach lining; and wherein the inner and outer elements are frustoconically tapered from a relatively larger proximal radius to a relatively smaller distal radius (Fig. 5). Taylor further discloses the inner and outer elements comprise nested baskets (Fig. 5). Taylor further discloses the openings are formed by a mesh in the outer element (Fig. 5). The inner and outer elements are inherently rotatable to some degree with respect to each other. The retention members are inherently releasable. Taylor further discloses a distal end ring in the outer element, and a proximal end ring in the inner element (Fig. 7).

### ***Allowable Subject Matter***

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3. Claims 4 and 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

4. Claims 10, and 13-23 are allowed.

5. The following is a statement of reasons for the indication of allowable subject matter: Taylor fails to disclose a plurality of spikes mounted tangentially on the inner basket adjacent mesh openings in the outer basket. The closest prior art is Cassell 6,666,873 in which flexible spikes are used to attach an anastomotic ring to tissue, however, these spikes are not actually tangentially mounted and are instead flexible in a tangential direction. Taylor further fails to disclose a vacuum source and applying a vacuum to the connector to draw stomach lining into the plurality of openings in the outer element, nor a pressure source and applying pressure to the connector to disengage stomach lining from the retention members and the openings in the outer element. The prior art of record and the prior art at large, alone or in combination, does not remedy the deficiencies of Taylor and thus the claims are allowed.

### ***Response to Arguments***

Applicant's arguments filed 10 April 2009 have been fully considered but they are not persuasive. Applicant argues that the device of Taylor is not a food intake limiting device. Examiner disagrees; the device of Taylor meets the structural limitations of claim 1 and, in use, would limit the amount of food capable of passing through its restricted opening. Applicant argues that the device of Taylor is not secured to the stomach lining. Examiner disagrees; As shown in figure 11 of the reference, the device

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protrudes out of the esophagus into the stomach and thus is secured to the stomach lining.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GREGORY ANDERSON whose telephone number is (571)270-3083. The examiner can normally be reached on Mon-Thurs 9:30am-3:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, jackie Ho can be reached on 571-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gregory A Anderson/

/(Jackie) Tan-Uyen T. Ho/  
Supervisory Patent Examiner, Art Unit 3773